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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re JEREMIAH M., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMIAH M.,

Defendant and Appellant.

E036688

(Super.Ct.No. J192445)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L.
Haight, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Jeffrey J. Koch, Deputy

Senior Assistant Attorney General, and Robert M. Foster, Supervising Deputy Attorney General, for Plaintiff and Respondent.

Following a contested jurisdictional hearing, the juvenile court found true that minor had violated the terms and conditions of his probation by leaving his court-ordered placement without permission as alleged in a Welfare and Institutions Code section 777, subdivision (a)(2)¹ petition. Minor was thereafter committed to the California Youth Authority (CYA) for a maximum period of six years. Minor's sole contention on appeal is the juvenile court abused its discretion in committing him to CYA. We find no abuse and will affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On December 26, 2002, minor, who was almost 16 years of age, was arrested by the San Bernardino Police Department for petty theft (Pen. Code, § 484). On February 19, 2003, minor signed an admission of guilt and was placed on informal probation. On August 21, 2003, the matter was closed, as minor had completed his grant of informal probation.

On December 10, 2003, minor, along with a coparticipant, robbed the Driftwood Dairy drive-through located at 735 E. Baseline Street in San Bernardino at gunpoint. Minor demanded money, and when one of the perpetrators displayed a handgun, the victim opened the cash register and had the money, about \$100, grabbed out of his hand.

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

Minor and his cohort then fled the scene. The victim later positively identified minor as one of the suspects.

On December 27, 2003, minor, armed with a small silver handgun and accompanied by a coparticipant, robbed the Burger King restaurant located at 935 North Waterman Avenue in San Bernardino. Minor demanded money, and after appropriating \$217, minor and his accomplice fled the scene. After an intensive search of the area, minor was arrested and the victim later positively identified minor in an in-field lineup as the suspect who had pointed a gun at her and demanded the restaurant's money. Following a waiver of his constitutional rights, minor admitted that he had carried out the robbery but claimed that the gun was only a BB gun.

On December 31, 2003, a section 602 petition was filed alleging that minor committed two counts of second degree robbery (Pen. Code, § 211) while personally using a firearm (Pen. Code, §§ 1203.06, subd. (a)(1) & 12022.5, subd. (a)(1)). On February 17, 2004, minor admitted the allegations after the court, at the prosecutor's request, dismissed the handgun allegations. Following a dispositional hearing, minor was declared a ward of the court and ordered into a suitable placement.

On April 28, 2004, minor was transported to the Fouts Springs Youth Facility (Fouts Springs) in Northern California. While at Fouts Springs, minor did poorly in the treatment programs, and as time passed he became more and more manipulative and angry and refused to take part in the facility's programs. He did not believe he should have been sent there in the first place, and he had to be counseled on several occasions in an effort to assist in his rehabilitative regimen. During his tenure at the facility, minor received nine serious incident reports for failure to follow staff directives, disrespectful

behavior towards staff, use of profanity, and possession of contraband. On June 14, 2004, minor ran away from the facility and was found hiding in a nearby forest. As a result, minor was terminated from Fouts Springs.

On June 25, 2004, a section 777, subdivision (a)(2) petition was filed alleging that minor violated the terms and conditions of his probation by leaving his court-ordered treatment facility without permission. On July 19, 2004, the juvenile court found the allegation true.

Following a contested dispositional hearing on September 24, 2004, the juvenile court committed minor to CYA. This appeal followed.

II

DISCUSSION

Minor contends the juvenile court abused its discretion in committing him to CYA without considering less restrictive alternatives as recommended by Dr. Gene Berg, a psychologist who examined minor and found him to be immature and not a suitable candidate for CYA. We disagree. The record clearly demonstrates the court considered the benefits of CYA on minor and the alternatives, but rejected the alternatives as inappropriate before arriving at the decision to commit minor to CYA.

We review a placement decision only for abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid.*) An appellate court will not lightly substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.) The juvenile court may consider a commitment to CYA without

previous resort to less restrictive placements. (*In re Asean D.*, at p. 473.) Lastly, “the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public.” (*Ibid.*) Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Evidence relevant to the disposition includes, but is not limited to, the age of the minor, the circumstances and gravity of the offenses committed, and the minor’s previous delinquent history. (§ 725.5.)

After a review of the entire record, we conclude there is substantial evidence here to support the commitment to CYA. Minor, who is almost 18 years old, is in serious need of educational services or vocational training. Minor is also in need of substance abuse counseling, as the record indicates minor consistently used marijuana and drank alcohol occasionally. In addition, based on his past offenses and behavior at Fouts Springs, minor is in dire need of anger management counseling and victim awareness counseling. Minor lacked remorse for his robbery victims; refused to take responsibility for his actions; and had to be disciplined at his placement for defiance, profanity use, and disrespect, as well as for other matters. The record sufficiently supports the court’s determination that minor would benefit by the reformatory, educational, disciplinary or other treatment provided by CYA.

Minor urges that the juvenile court abused its discretion in committing him to CYA because (1) as Dr. Berg found, he is not suitable for placement at CYA, (2) his behavior at Fouts Springs deteriorated because he was a substantial distance from his

mother, (3) he received high marks while at juvenile hall, which indicated he does well when he is near his mother, and (4) local placement in Riverside County would have been appropriate for minor. However, the court considered Dr. Berg's testimony, the mitigating factors, and the request for local placement but rejected those factors and recommendations based on the seriousness of minor's offenses; the circumstances of minor's offenses; the safety of the community; minor's criminal sophistication; minor's age; and the professional assistance, intensive counseling, and school programs offered at CYA.

Substantial evidence supports the court's finding that a less restrictive alternative would be ineffective and inappropriate. Minor has a history of serious criminal offenses and failure to cooperate with the court, the probation department, and staff at placement. In an effort to rehabilitate minor, the court has given minor an opportunity to mend his delinquent behavior on informal probation, which he successfully completed, as well as placement at Fouts Springs, which he did not. The court considered other placement but found it inappropriate under the circumstances of this case. Indeed, the record indicates that it is necessary to commit minor to CYA because minor is in need of a closed setting with substantial counseling toward modification of minor's behavior.

The statutory scheme guiding the juvenile court in its treatment of juvenile offenders “contemplates a progressively restrictive and punitive series of disposition orders in cases such as that now before us -- namely, home placement under supervision, foster home placement, placement in a local treatment facility and, as a last resort, Youth Authority placement.” (*In re Aline D.* (1975) 14 Cal.3d 557, 564; see also *In re Bryan* (1976) 16 Cal.3d 782, 788.) Nonetheless, while CYA is considered a final treatment

resource (*In re Michael R.* (1977) 73 Cal.App.3d 327, 337), “there is no absolute rule that a Youth Authority commitment should never be ordered unless less restrictive placements have been attempted.” (*In re Ricky H.* (1981) 30 Cal.3d 176, 183.) Instead, the record need only show, as it does here, probable benefit to the minor from commitment to CYA and that less restrictive alternatives were considered and rejected. (*In re George M.* (1993) 14 Cal.App.4th 376, 379; *In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576.)

The court articulated reasonable concerns for the community and minor’s rehabilitation, concerns that can only be addressed by CYA given minor’s history and current offense. Minor’s arguments to the contrary are to no avail. We thus conclude the juvenile court did not abuse its discretion by committing minor to CYA.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P.J.

HOLLENHORST
J.